

## SENATE BILL No. 368

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-9.

**Synopsis:** Age discrimination. Repeals the current age discrimination statute and transfers jurisdiction over age discrimination proceedings from the commissioner of labor to the civil rights commission. Establishes that certain actions by an employer, a labor organization, or an employment agency relating to employment are unlawful when the actions involve an individual at least 40 years of age. Provides exemptions.

**Effective:** July 1, 2003.

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### Server, Rogers, Broden

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January 16, 2003, read first time and referred to Committee on Pensions and Labor.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 368

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 22-9-1-3 IS AMENDED TO READ AS FOLLOWS  
2       [EFFECTIVE JULY 1, 2003]: Sec. 3. As used in this chapter:  
3       (a) "Person" means one (1) or more individuals, partnerships,  
4       associations, organizations, limited liability companies, corporations,  
5       labor organizations, cooperatives, legal representatives, trustees,  
6       trustees in bankruptcy, receivers, and other organized groups of  
7       persons.  
8       (b) "Commission" means the civil rights commission created under  
9       section 4 of this chapter.  
10       (c) "Director" means the director of the civil rights commission.  
11       (d) "Deputy director" means the deputy director of the civil rights  
12       commission.  
13       (e) "Commission attorney" means the deputy attorney general, such  
14       assistants of the attorney general as may be assigned to the  
15       commission, or such other attorney as may be engaged by the  
16       commission.  
17       (f) "Consent agreement" means a formal agreement entered into in



lieu of adjudication.

(g) "Affirmative action" means those acts that the commission determines necessary to assure compliance with the Indiana civil rights law.

(h) "Employer" means the state or any political or civil subdivision thereof and any person employing six (6) or more persons within the state, except that the term "employer" does not include:

(1) any nonprofit corporation or association organized exclusively for fraternal or religious purposes;

(2) any school, educational, or charitable religious institution owned or conducted by or affiliated with a church or religious institution; or

(3) any exclusively social club, corporation, or association that is not organized for profit.

(i) "Employee" means any person employed by another for wages or salary. However, the term does not include any individual employed:

(1) by ~~his~~ **the individual's** parents, spouse, or child; or

(2) in the domestic service of any person.

(j) "Labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment or for other mutual aid or protection in relation to employment.

(k) "Employment agency" means any person undertaking with or without compensation to procure, recruit, refer, or place employees.

(l) "Discriminatory practice" means:

(1) the exclusion of a person from equal opportunities because of race, religion, color, sex, disability, national origin, or ancestry;

(2) a system that excludes persons from equal opportunities because of race, religion, color, sex, disability, national origin, or ancestry;

(3) the promotion of racial segregation or separation in any manner, including but not limited to the inducing of or the attempting to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, or ancestry;  
**or**

(4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is committed by a covered entity (as defined in IC 22-9-5-4); **or**

**(5) a violation of IC 22-9-2.1.**

Every discriminatory practice relating to the acquisition or sale of real estate, education, public accommodations, employment, or the

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1 extending of credit (as defined in IC 24-4.5-1-301) shall be considered  
2 unlawful unless it is specifically exempted by this chapter.

3 (m) "Public accommodation" means any establishment that caters  
4 or offers its services or facilities or goods to the general public.

5 (n) "Complainant" means:

6 (1) any individual charging on ~~his~~ **the individual's** own behalf to  
7 have been personally aggrieved by a discriminatory practice; or

8 (2) the director or deputy director of the commission charging that  
9 a discriminatory practice was committed against a person other  
10 than himself or a class of people, in order to vindicate the public  
11 policy of the state (as defined in section 2 of this chapter).

12 (o) "Complaint" means any written grievance that is:

13 (1) sufficiently complete and filed by a complainant with the  
14 commission; or

15 (2) filed by a complainant as a civil action in the circuit or  
16 superior court having jurisdiction in the county in which the  
17 alleged discriminatory practice occurred.

18 The original of any complaint filed under subdivision (1) shall be  
19 signed and verified by the complainant.

20 (p) "Sufficiently complete" refers to a complaint that includes:

21 (1) the full name and address of the complainant;

22 (2) the name and address of the respondent against whom the  
23 complaint is made;

24 (3) the alleged discriminatory practice and a statement of  
25 particulars thereof;

26 (4) the date or dates and places of the alleged discriminatory  
27 practice and if the alleged discriminatory practice is of a  
28 continuing nature the dates between which continuing acts of  
29 discrimination are alleged to have occurred; and

30 (5) a statement as to any other action, civil or criminal, instituted  
31 in any other form based upon the same grievance alleged in the  
32 complaint, together with a statement as to the status or disposition  
33 of the other action.

34 No complaint shall be valid unless filed within one hundred eighty  
35 (180) days from the date of the occurrence of the alleged  
36 discriminatory practice.

37 (q) "Sex" as it applies to segregation or separation in this chapter  
38 applies to all types of employment, education, public accommodations,  
39 and housing. However:

40 (1) it shall not be a discriminatory practice to maintain separate  
41 rest rooms;

42 (2) it shall not be an unlawful employment practice for an

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1 employer to hire and employ employees, for an employment  
 2 agency to classify or refer for employment any individual, for a  
 3 labor organization to classify its membership or to classify or refer  
 4 for employment any individual, or for an employer, labor  
 5 organization, or joint labor management committee controlling  
 6 apprenticeship or other training or retraining programs to admit  
 7 or employ any other individual in any program on the basis of sex  
 8 in those certain instances where sex is a bona fide occupational  
 9 qualification reasonably necessary to the normal operation of that  
 10 particular business or enterprise; and

11 (3) it shall not be a discriminatory practice for a private or  
 12 religious educational institution to continue to maintain and  
 13 enforce a policy of admitting students of one (1) sex only.

14 (r) "Disabled" or "disability" means the physical or mental condition  
 15 of a person that constitutes a substantial disability. In reference to  
 16 employment, under this chapter, "disabled or disability" also means the  
 17 physical or mental condition of a person that constitutes a substantial  
 18 disability unrelated to the person's ability to engage in a particular  
 19 occupation.

20 (s) "Age" refers to the age of a person who is at least forty (40)  
 21 years of age.

22 SECTION 2. IC 22-9-1-6 IS AMENDED TO READ AS FOLLOWS  
 23 [EFFECTIVE JULY 1, 2003]: Sec. 6. (a) The commission shall  
 24 establish and maintain a permanent office in the city of Indianapolis.

25 (b) The commission may appoint such attorneys and other  
 26 employees and agents as it considers necessary, fix their compensation  
 27 within the limitation provided by law, and prescribe their duties. **All**  
 28 **duties performed by an employee or agent of the commission shall**  
 29 **be performed in the public interest.** All these employees, with the  
 30 exception of the executive director and attorneys, shall be appointed by  
 31 the commission from eligible lists to be promulgated by the department  
 32 of personnel as the result of a competitive examination held under  
 33 IC 4-15-2 and rules of the department and on the basis of training,  
 34 practical experience, education, and character. However, special  
 35 consideration and due weight shall be given to the practical experience  
 36 and training that a person may have for the particular position involved  
 37 regardless of ~~his~~ **the person's** academic training. Promotions,  
 38 suspensions, and removal of persons appointed from such lists shall be  
 39 in accordance with IC 4-15-2. The reasonable and necessary traveling  
 40 expenses of each employee of the commission while actually engaged  
 41 in the performance of duties in behalf of the commission shall be paid  
 42 in accordance with the state travel policies and procedures established

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by the Indiana department of administration and approved by the budget agency.

(c) Except as it concerns judicial review, the commission may adopt rules under IC 4-22-2 to implement this ~~chapter~~ **article**.

(d) The commission shall formulate policies to effectuate the purposes of this chapter and make recommendations to agencies and officers of the state or local subdivisions thereof to effectuate such policies. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state or any political subdivision or agency thereof shall furnish the commission, upon its request, all records, papers, and information in their possession relating to any matter before the commission.

(e) The commission shall receive and investigate complaints alleging discriminatory practices. The commission shall not hold hearings in the absence of a complaint. All investigations of complaints shall be conducted by staff members of the civil rights commission or their agents. **All duties performed by an employee or agent of the commission shall be performed in the public interest.**

(f) The commission may create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this chapter. The commission may itself, or it may empower these agencies and councils to:

(1) study the problems of discrimination in the areas covered by section 2 of this chapter when based on race, religion, color, sex, **age**, handicap, national origin, or ancestry; and

(2) foster through community effort, or otherwise, good will among the groups and elements of the population of the state.

These agencies and councils may make recommendation to the commission for the development of policies and procedures in general. Advisory agencies and conciliation councils created by the commission shall be composed of representative citizens serving without pay but with reimbursement for reasonable and necessary actual expenses.

(g) The commission may issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, **age**, handicap, national origin, or ancestry.

(h) The commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because ~~he the person~~ filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation.

(i) The commission may hold hearings, subpoena witnesses, compel

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1 their attendance, administer oaths, take the testimony of any person  
 2 under oath, and require the production for examination of any books  
 3 and papers relating to any matter under investigation or in question  
 4 before the commission. The commission may make rules as to the  
 5 issuance of subpoenas by individual commissioners. Contumacy or  
 6 refusal to obey a subpoena issued under this section shall constitute a  
 7 contempt. All hearings shall be held within Indiana at a location  
 8 determined by the commission. A citation of contempt may be issued  
 9 upon application by the commission to the circuit or superior court in  
 10 the county in which the hearing is held or in which the witness resides  
 11 or transacts business.

12 (j) The commission may appoint administrative law judges other  
 13 than commissioners, when an appointment is deemed necessary by a  
 14 majority of the commission. The administrative law judges shall be  
 15 members in good standing before the bar of Indiana and shall be  
 16 appointed by the chairman of the commission. An administrative law  
 17 judge appointed under this subsection shall have the same powers and  
 18 duties as a commissioner sitting as an administrative law judge.  
 19 However, the administrative law judge may not issue subpoenas.

20 (k) The commission shall state its findings of fact after a hearing  
 21 and, if the commission finds a person has engaged in an unlawful  
 22 discriminatory practice, shall cause to be served on this person an order  
 23 requiring the person to cease and desist from the unlawful  
 24 discriminatory practice and requiring the person to take further  
 25 affirmative action as will effectuate the purposes of this chapter,  
 26 including but not limited to the power:

27 ~~(A)~~ (1) to restore **the** complainant's losses incurred as a result of  
 28 discriminatory treatment, as the commission may deem necessary  
 29 to assure justice; however, this specific provision when applied to  
 30 orders pertaining to employment shall include only wages, salary,  
 31 or commissions;

32 ~~(B)~~ (2) to require the posting of notice setting forth the public  
 33 policy of Indiana concerning civil rights and respondent's  
 34 compliance with the policy in places of public accommodations;

35 ~~(C)~~ (3) to require proof of compliance to be filed by **the**  
 36 respondent at periodic intervals; and

37 ~~(D)~~ (4) to require a person who has been found to be in violation  
 38 of this chapter and who is licensed by a state agency authorized  
 39 to grant a license to show cause to the licensing agency why **his**  
 40 **the person's** license should not be revoked or suspended.

41 (l) Judicial review of a cease and desist order or other affirmative  
 42 action as referred to in this chapter may be obtained under IC 22-9-8.

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If no proceeding to obtain judicial review is instituted within thirty (30) days from receipt of notice by a person that an order has been made by the commission, the commission, if it determines that the person upon whom the cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(m) If, upon all the evidence, the commission shall find that a person has not engaged in any unlawful practice or violation of this chapter, the commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.

(n) The commission may furnish technical assistance requested by persons subject to this chapter to further compliance with this chapter or with an order issued thereunder.

(o) The commission shall promote the creation of local civil rights agencies to cooperate with individuals, neighborhood associations, and state, local, and other agencies, both public and private, including agencies of the federal government and of other states.

(p) The commission may reduce the terms of conciliation agreed to by the parties to writing (to be called a consent agreement) that the parties and a majority of the commissioners shall sign. When signed, the consent agreement shall have the same effect as a cease and desist order issued under subsection (k). If the commission determines that a party to the consent agreement is not complying with it, the commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement and the party is subject to the commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(q) In lieu of investigating a complaint and holding a hearing under this section, the commission may issue an order based on findings and determinations by the federal Department of Housing and Urban Development or the federal Equal Employment Opportunity Commission concerning a complaint that has been filed with one (1) of these federal agencies and with the commission. The commission shall adopt by rule standards under which the commission may issue such an order.

(r) Upon notice that a complaint is the subject of an action in a federal court, the commission shall immediately cease investigation of

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the complaint and may not conduct hearings or issue findings of fact or orders concerning that complaint.

SECTION 3. IC 22-9-1-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. In addition to its power to investigate the discriminatory practices referred to in this chapter, the commission may receive written complaints of violation of this chapter or other discriminatory practices based upon race, religion, color, sex, **disability**, national origin, ~~or~~ ancestry, **or, in relation to employment only, age**, and to investigate such complaints as it deems meritorious, or to conduct such investigation in the absence of complaints whenever it deems it in the public interest. It may transmit to the general assembly its recommendations for legislation designed to aid in the removing of such discrimination.

SECTION 4. IC 22-9-2.1 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

**Chapter 2.1. Age Discrimination**

**Sec. 1. As used in this chapter, "commission" means the civil rights commission created by IC 22-9-1-4.**

**Sec. 2. As used in this chapter, "covered entity" means an employer, an employment agency, or a labor organization.**

**Sec. 3. As used in this chapter, "defined benefit plan" has the meaning set forth in 29 U.S.C. 1002(35).**

**Sec. 4. As used in this chapter, "employee" has the meaning set forth in IC 22-9-1-3(i).**

**Sec. 5. As used in this chapter, "employee pension benefit plan" has the meaning set forth in 29 U.S.C. 1002(2).**

**Sec. 6. As used in this chapter, "employer" has the meaning set forth in IC 22-9-1-3(h).**

**Sec. 7. As used in this chapter, "employment agency" has the meaning set forth in IC 22-9-1-3(k).**

**Sec. 8. As used in this chapter, "labor organization" has the meaning set forth in IC 22-9-1-3(j).**

**Sec. 9. As used in this chapter, "person" has the meaning set forth in IC 22-9-1-3(a).**

**Sec. 10. As used in this chapter, "public safety employee" means an individual who is or applies to be any of the following:**

- (1) A member of a fire department (as defined in IC 36-8-1-8).**
- (2) A member of a police department (as defined in IC 36-8-1-9).**
- (3) A state police officer.**
- (4) A county police officer.**

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- (5) A correctional officer (as defined in IC 5-10-10-1.5).
- (6) An excise police officer.
- (7) A county police reserve officer.
- (8) A city police reserve officer.
- (9) A conservation enforcement officer.
- (10) A town marshal.
- (11) A deputy town marshal.
- (12) A state university police officer appointed under IC 20-12-3.5.

**Sec. 11. (a) It is unlawful for an employer to:**

- (1) fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to the individual's compensation, terms, conditions, or privileges of employment because of the individual's age;
- (2) limit, segregate, or classify employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual's status as an employee because of the individual's age; or
- (3) reduce the wage rate of any employee in order to comply with this chapter.

**(b) It is unlawful for an employment agency to:**

- (1) fail or refuse to refer for employment or otherwise discriminate against any individual because of the individual's age; or
- (2) classify or refer for employment any individual on the basis of the individual's age.

**(c) It is unlawful for a labor organization to:**

- (1) exclude or expel any individual from the labor organization's membership or otherwise discriminate against any individual because of the individual's age;
- (2) limit, segregate, or classify the labor organization's membership or classify or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities or would limit employment opportunities or otherwise adversely affect the individual's status as an employee or as an applicant for employment because of the individual's age; or
- (3) cause or attempt to cause an employer to discriminate against an individual in violation of this subsection.

**(d) It is unlawful for:**

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(1) an employer to discriminate against any of the employer's employees or applicants for employment;

(2) an employment agency to discriminate against any individual; or

(3) a labor organization to discriminate against any member of or applicant for membership in the labor organization;

because the employee, applicant for employment, individual, member, or applicant for membership has opposed any practice made unlawful by this chapter or because the employee, applicant for employment, individual, member, or applicant for membership has filed a complaint with the commission, testified, assisted, or participated in any manner in an investigation, a proceeding, or litigation under this chapter.

(e) It is unlawful for:

(1) an employer to print or publish or cause to be printed or published any notice or advertisement relating to employment by the employer;

(2) a labor organization to print or publish or cause to be printed or published any notice or advertisement relating to membership or any classification or referral for employment by the labor organization; or

(3) an employment agency to print or publish or cause to be printed or published any notice or advertisement relating to any classification or referral for employment by the employment agency;

that indicates any preference, limitation, specification, or discrimination based on age.

Sec. 12. Notwithstanding any of the prohibitions contained in this chapter, it is not unlawful for an employer, an employment agency, or a labor organization to do any of the following:

(1) Take any action otherwise prohibited under this chapter if:

(A) age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business; or

(B) the differentiation is based on reasonable factors other than age.

(2) If not prohibited by federal antidiscrimination law, establish, maintain, observe the terms of, or comply with an employee pension benefit plan, a defined benefit plan, a bona fide employee benefit plan, or other pension, benefit, or retirement plan.

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(3) Observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that a bona fide seniority system must not require or permit the involuntary retirement of an individual at least forty (40) years of age because of the age of the individual.

(4) Discharge or otherwise discipline an individual for good cause.

**Sec. 13.** Notwithstanding any of the prohibitions contained in this chapter, it is not unlawful for the state, a political subdivision of the state, or an agency or instrumentality of the state or a political subdivision of the state to:

(1) fail or refuse to hire an individual as a public safety employee; or

(2) discharge an individual from employment as a public safety employee;

because of the individual's age.

**Sec. 14.** Notwithstanding any of the prohibitions of this chapter, it is not a discriminatory practice to require the retirement of any employee who:

(1) becomes sixty-five (65) years of age; and

(2) for the two (2) year period immediately before retirement, is employed in a bona fide executive or high policy making position;

where the compulsory retirement is not prohibited by federal antidiscrimination law.

**Sec. 15.** The remedies available regarding complaints directed against a covered entity under this chapter are limited to the remedies provided under IC 22-9-1-6(k).

**Sec. 16.** The prohibitions of this chapter are limited to actions affecting individuals who are at least forty (40) years of age.

**SECTION 5.** IC 22-9-2 IS REPEALED [EFFECTIVE JULY 1, 2003].

**SECTION 6.** [EFFECTIVE JULY 1, 2003] (a) A proceeding pending before the commissioner of labor under IC 22-9-2 before its repeal by this act is transferred to the civil rights commission on July 1, 2003, and shall be treated after June 30, 2003, as if the proceeding had been properly filed with the civil rights commission.

(b) The commissioner of labor shall arrange for the transfer to the civil rights commission of records and other property needed to carry out this SECTION.



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